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December 20, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Reference: MM Docket No. 93-254

Dear Ms. Searcy:

Submitted herewith on behalf of Meredith Corporation and Northstar Television Group, Inc., are an original and four copies of their **Comments** in response to the Notice of Inquiry in the above referenced proceeding.

If there are any questions in regard to this matter, kindly communicate directly with this office.

Respectfully submitted,

MEREDITH CORPORATION AND NORTHSTAR TELEVISION GROUP, INC.

By Dawn M. Sciarrino
Michael H. Bader
Theododre D. Kramer
Dawn M. Sciarrino

Its Attorneys

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Before The

Federal Communications Commission

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter Of	)	
	)	
Limitations on Commercial Time	)	MM Docket No. 93-254
on Television Broadcast Stations	)	
	)	
	)	
	)	

To The Commission:

Comments

MEREDITH CORPORATION AND
NORTHSTAR TELEVISION GROUP, INC.

Michael H. Bader
Theodore D. Kramer
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December 20, 1993

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Summary

The Commission seeks information regarding the continued validity of the rationales for deregulation in 1984 and contemplates the reinstatement of commercial time limitations on television stations. Meredith Corporation and Northstar Television Group, Inc. believe that such limitations are not necessary, given today's programming market-place, that the rationales supporting 1984 deregulation remain valid today and that regulation of commercial time without a legitimate governmental interest runs afoul of broadcasters' First Amendment rights.

Meredith Corporation and Northstar Television Group, Inc. submit that the proliferation of video programming outlets, including increases in the number of broadcast television stations, cable availability, cable television channels, satellite and video, have given viewers more control over the programming they receive. Viewers today "regulate" commercialization through the "tyranny of the remote control." In addition, the competition to broadcast television forces licensees to pay ever greater attention to the viewing public's tastes, needs and desires and to program accordingly to maintain ratings and the resulting advertising support.

Commercial time limits similar to those in place prior to the 1984 *Deregulation Order* are not necessary given the competition that faces television broadcast stations today. Empirical data demonstrates that a decade after deregulation, television stations continue

broadcasting fewer commercial minutes than were allowed under the pre-deregulation limits. On average, television stations broadcast approximately 12 commercial minutes an hour. Television stations also are airing significantly fewer commercial minutes than cable networks, which are not subject to any such regulations. Thus, even without governmental regulation, broadcast stations are being regulated by market forces.

Limitations upon the amount of commercial material a broadcast station may air, runs afoul of the First Amendment. No substantial governmental interest would be advanced by such limitations given the current market-place. Any governmental interest to be advanced from limitations on commercial matter is being met by market-driven self-regulation. Thus, re-imposition of regulations limiting commercial matter on broadcast television are both unnecessary and unconstitutional.

Finally, the unnecessary regulation of commercial time will place an undue burden on both the government's and broadcaster's limited resources. The minimal public interest benefit to be derived from such regulation does not out-weigh the costs of the regulation.

Before The

Federal Communications Commission

Washington, D.C. 20554

In The Matter Of	)	
	)	
Limitations on Commercial Time on Television Broadcast Stations	)	MM Docket No. 93-254
	)	
	)	
	)	

To: The Commission

Comments

Meredith Corporation ("Meredith")[1], and Northstar Television Group, Inc. ("Northstar")[2] (together the "Commenters") respectfully submit these comments in response to the Notice Of Inquiry In the Matter of Limitations on Commercial Time on Television Broadcast Stations, MM Docket 93-254, FCC 93-459, released October 7, 1993 (hereinafter "NOI").

I. Introduction

The Commenters control eleven commercial television stations throughout the United States.[3] The NOI proposes the possible

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1 Meredith is the licensee of television stations KPHO-TV, Phoenix, Arizona, WOFL(TV), Orlando, Florida, WNEM-TV, Bay City, Michigan, KCTV(TV), Kansas City, Missouri, and WTVH-TV, Syracuse, New York and parent company of San Joaquin Communications Corporation, licensee of KSEE(TV) and KVVU Broadcasting Corporation licensee of KVVU-TV, Henderson, Nevada.

2 Northstar is the parent company of Northstar Television of Grand Rapids, Inc., licensee of WZZM-TV, Grand Rapids, Michigan, Northstar Television of Jackson, Inc., licensee of WAPT(TV), Jackson, Mississippi, Northstar Television of Erie, Inc., licensee of WSEE-TV, Erie, Pennsylvania, and Northstar Television of Providence, Inc., licensee of WNAC-TV, Providence, Rhode Island.

3 *See Notes* 1 and 2, *supra.*

re-instatement of regulations which will directly affect the Commenters' advertising and programming policies. The Commenters will present the Commission with actual information from the video market-place, as well as the impact of the proposed regulations on broadcasters nationwide.

II. Background

In 1984 the Federal Communications Commission ("FCC") eliminated its guidelines which had, in practical effect, prohibited television stations from airing more than 16 minutes of commercial time per hour.[4] *Report and Order in MM Docket No. 83-670, ("Television Deregulation"),* 98 FCC 2d 1076, 1101-05, *recon. denied* 104 FCC 2d 357 (1986), *aff'd in part and remanded in part sub. nom Action for Children's Television v. FCC,* 821 F.2d 741 (D.C. 1987). The Commission determined that its concerns with "commercialization"[5] were better dealt with by market forces than FCC rules. *Television Deregulation* at 1102. The Commission found that: a) market incentives "are the decisive factor in determining appropriate levels of commercialization;"[6] and b) the

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[4] The National Association of Broadcasters canceled the advertising provisions of its Radio and Television Codes on March 10, 1982. *See NAB Legal Guide to Broadcast Law and Regulation,* 3d ed., 1988 at page 86-87. *See also U.S. v. National Association of Broadcasters,* 553 F. Supp. 621 (D.D.C. 1982).

[5] Commercialization was defined as licensee "abuses with respect to the total amount of time devoted to advertising as well as the frequency with which programming is interrupted for commercial messages." *Television Deregulation* at 1101.

[6] *Television Deregulation* at 1103 and 1104-05. The Commission noted that similar rationales were approved by the Court of Appeals with respect to the elimination of commercial limits on radio broadcasting. *Television Deregulation* at 1103, n. 93. "The Commission hypothesized that since audiences avoid radio with excessive advertising, those stations would become less attractive to advertisers, and therefore, would lose advertising revenue. Thus, at present and in the future, a self-regulating market mechanism will prevent overcommercialization." *Office of Communications of the United Church of Christ v. FCC,* 707 F.2d 1413, 1438 (D.C. Cir. 1983).

direct and indirect costs, such as anti-competitive results, did not justify the regulation. *Television Deregulation* at 1103-04. Thus, "the Commission ... abolished the guidelines, concluding that competition would continue to regulate commercial excesses." *NOI* at ¶ 2. Specifically, "[t]he Commission found in 1984 that the number of alternatives available to viewers is the best protection against over-commercialization. The tyranny of the remote control provides an adequate check on broadcast stations that must increasingly compete for viewers." *See NOI, Separate Statement of Chairman James H. Quello* at page 4. In other words, "viewers are the best judge of how much advertising is too much." *NOI, Separate Statement of James H. Quello,* at 4.

In the *NOI,* the Commission seeks comment on "whether the public interest would be served by reestablishing limits on the amount of commercial matter that a television station can broadcast." *NOI* at ¶ 6. It asks whether "some measure besides public acceptance [should] be used to define 'excess' commercial programming ..." and whether "there is a distinction between 'commercialism' as it was defined in the 1984 *Order,* and the various formats used for commercial programming as it exists today?" NOI at ¶ 7.

III. Discussion

The Commission seeks information regarding the continued validity of the rationales for deregulation in 1984 and contemplates the reinstatement of commercial time limitations on television stations. The Commenters believe that such limitations are not necessary, given

today's programming market-place, the rationales supporting 1984 deregulation remain valid today and that regulation of commercial time without a legitimate governmental interest runs afoul of broadcasters' First Amendment Rights.

A. The Proliferation of Programming Sources Gives Viewers Market Power to "Regulate" Commercialization Through the "Tyranny of the Remote Control"

Since 1984 the telecommunications market place has changed significantly. The number and type of video programming sources has increased dramatically, while the style, type and length of commercial advertisements has changed. The proliferation of alternative video programming sources has increased competition for viewers, ratings and advertising dollars. Thus, economic theory and economic reality both dictate that television stations will not over-commercialize in the face of viewer dissatisfaction and the resulting loss of ratings and advertising revenue.

As demonstrated in Chart A, since 1984, the number of commercial television stations in the United States increased by 35%. In the last 20 years, the number of commercial television stations has nearly doubled.[7] *See* Chart A.

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[7] "The number of television stations increased by 50 percent between 1975 and 1992; more than half of all households receive ten or more over-the-air TV signals..." *NOI, Separate Statement of Chairman James H. Quello,* at page 5.

CHART A: COMMERCIAL TELEVISION STATIONS

Year	Commercial VHF	Commercial UHF	All Commercial Stations	Percentage Change
1974	513	184	697	--
1984	523	318	841	20.66%
1993	552	585	1137	35.20%
1974-1993	--	--	--	63.13%

Chart A Legend: Commercial Television Stations in the United States. Source: Television and Cable Factbook, Volume 61, 1993 ed., page I-7.

The number of people receiving programming from cable television and the number of channels available to cable subscribers has also increased dramatically. According to Congressional findings, "[t]here has been a substantial increase in the penetration of cable television systems over the past decade. Nearly 56 million households, over 60 percent of the households with televisions subscribe to cable television, and this percentage is almost certain to increase." Cable Television Consumer Protection And Competition Act of 1992, P.L. 102-385, 106 Stat. 1460, Section 2(a)(3). The number of cable systems in the United States increased from 6,400 in 1984 to 11,083 in 1993 and the number of subscribers to basic cable increased by 23,485,984 subscribers during the same period. *See* Chart B. In addition, the number of homes passed has also nearly doubled.[8] *Id.*

[8] "[O]ver 90 percent of all households are passed by cable and over 60 percent subscribe ..." *NOI, Separate Statement of Chairman James H. Quello,* at page 5. *See also* Report of the Senate Committee on Commerce, Science and Transportation on the Cable Television Consumer Protection Act of 1991, S.Rept. 92, 102d Cong. 1st Sess. at 3 (1991).

CHART B: CABLE SYSTEMS, SUBSCRIBERS AND HOMES PASSED

Year	Number of Systems	Basic Subscribers	Pay Units	Homes Passed
1984	6,400	29,889,490	19,838,275	40,351,931
1993	11,083	53,375,474	37,151,391	78,654,479

Chart B Legend: Cable systems, subscribers and homes passed. Source: 1984: Television and Cable Factbook, Volume 52, 1984 ed., page 1725; 1993: Television and Cable Factbook, Volume 61, 1993 Services ed., page I-70 (data as of November 1, 1992).[9]

The number of channels available and the variety of programming available has also increased greatly. "[P]rogramming choices have ... grown about 50 percent since the 1984 [Cable] Act was passed." Report of the Senate Committee on Commerce, Science and Transportation on the Cable Television Consumer Protection Act of 1991, S.Rept. 92, 102d Cong. 1st Sess. at 3 (1991). As noted by Chairman Quello, the average cable subscriber receives more than 30 channels.[10] In fact, 94.46% of all cable subscribers can now receive 30 or more channels, whereas only 57.43% of cable subscribers could receive 30 or more channels in 1984. *See* Chart C. Stated differently, in 1984 only 17,165,357 cable

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9 According to the Senate Commerce Committee on Commerce, Science and Transportation, the cable industry data shows the following statistics:

	1990	1985
TV Households (in millions)	93.2	84.9
Homes Passed (in millions)	84.4	64.7
Basic Subs (in millions)	52.0	36.7
Pay Units (in millions)	42.1	30.6

Report of the Senate Committee on Commerce, Science and Transportation on the Cable Television Consumer Protection Act of 1991, S.Rept. 92, 102d Cong. 1st Sess. at 3 (1991).

10 *NOI, Separate Statement of Chairman James H. Quello,* at page 5. *See also* Report of the Senate Committee on Commerce, Science and Transportation on the Cable Television Consumer Protection Act of 1991, S.Rept. 92, 102d Cong. 1st Sess. at 3 (1991)("[T]he average cable system offers about 36 channels.").

subscribers could receive 30 or more channels. *Id.* Today, 50,509,961 cable subscribers receive 30 or more channels. *Id.*

CHART C: GROWTH OF CABLE TELEVISION 1984 TO 1993

Year	Channel Capacity	Systems	% of Total	Subscribers	% of Total
1984	54+	275	4.29	1,877,768	6.28
1993	54+	1,152	10.40	18,541,128	34.57
1984	30-53	1,999	31.23	15,287,589	51.15
1993	30-53	6,080	54.86	31,968,833	59.89
1984	20-29	1,113	17.39	6,311,942	21.12
1993	20-29	1,273	11.49	1,828,994	3.43
1984	13-19	298	4.66	845,994	2.83
1993	13-19	328	2.96	117,723	0.22
1984	6-12	2,180	34.06	5,101,190	17.07
1993	6-12	770	6.94	304,324	0.57
1984	5 Only	67	1.05	30,392	0.10
1993	5 Only	17	0.15	3,407	0.006
1984	Sub-5	12	0.19	2,281	0.01
1993	Sub-5	6	0.05	789	0.001
1984	Not Available	456	7.13	432,334	1.45
1993	Not Available	1,457	13.15	700,276	1.31
1984	Totals	6,400	100	29,889,490	100
1993	Totals	11,083	100	53,375,474	100

Chart C Legend: Growth of cable channel capacity, cable systems, and subscribers 1984 to 1993. Source: 1984: Television and Cable Factbook, Volume 52, 1984 ed., page 1726 (data as of April 1, 1984); 1993: Television and Cable Factbook, Volume 61, 1993 Services ed., page I-69 (data as of November 1, 1992).

In addition to the increases in over-the-air and cable programming sources, the video market place has also seen an increase in alternative programming sources. For example, since the early 1980's wireless cable or MMDS has begun to challenge cable and over-the-air broadcast

stations.[11] Furthermore, other alternatives, such as the delivery of video signals via satellite, are becoming more common.[12]

As demonstrated above, the video market-place, *e.g.* the number of options available to viewers, has expanded significantly in the last decade. The Commenters believe that the assumptions used in the 1984 *Order* not only remain valid today but are, in fact, even more valid, based on the proliferation of viewer options. Notwithstanding home shopping stations and the like, which serve a unique purpose and audience and provide a different type of service to viewers,[13] most broadcast stations today air information and entertainment programming designed to meet the needs and interests of their viewers.[14] These broadcast stations now

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11 *See* Report of the Senate Committee on Commerce, Science and Transportation on the Cable Television Consumer Protection Act of 1991, S.Rept. 92, 102d Cong. 1st Sess. at 14 (1991) ("Today, wireless cable systems are operating in 45 communities and have about 350,000 subscribers.")

12 Report of the Senate Committee on Commerce, Science and Transportation on the Cable Television Consumer Protection Act of 1991, S.Rept. 92, 102d Cong. 1st Sess. at 15 ("Today there are about two to three million homes that own satellite dishes.") *See also NOI, Separate Statement of Chairman James H. Quello,* at page 5. ("[O]ther competitive video providers are increasingly available, and national DBS service is anticipated next year.")

13 *In the Matter of Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992, Home Shopping Station Issues,* 8 FCC Rcd. 5321 (1993)(hereinafter, "Home Shopping Report and Order").

14 "As of December 22, 1992, Home Shopping Network, Inc., the major distributor of broadcast home shopping programming, had affiliation agreements with 105 television stations. These stations comprise less than 10% of the total number of commercial television stations currently licensed by the Commission." *NOI* at note 9. "Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate." Cable Television Consumer Protection And Competition Act of 1992, P.L. 102-385, 106 Stat. 1460, Section 2(a)(11).

must compete for both viewers and advertisers with many more video programming options, particularly cable systems.[15]

Today's television station can ill afford to overload its schedule with commercial matter. Its viewership, and thus its ratings, can and will turn elsewhere for program matter with fewer commercials or fewer interruptions in the programming. Those viewers now can turn to any number of alternatives including more over-the-air stations, cable stations or video tapes. The "tyranny of the remote control" is more pronounced in today's market than it was a decade ago.

B. A Decade After Deregulation Commercial Time Remains Below Pre-1984 Limits; Increased Commercialization Exists Only Within Certain Categories of Programming Filling Public Needs

A station that loses viewers and whose ratings decline, will lose the advertising dollars which support the station. Advertisers will not buy spots on a station that does not have viewership or which is so "cluttered" with commercials that its message is lost.[16] Thus, the financial base of the station erodes from over-commercialization.

Since deregulation in 1984, there has not been a significant increase in commercialization on over-the-air stations. To the contrary,

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15 "As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services....Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems." Cable Television Consumer Protection And Competition Act of 1992, P.L. 103-385, 106 Stat. 1460, Section 2(a)(13)(14).

16 *See* 1992 Television Commercial Monitoring Report, Sponsored by the American Association of Advertising Agencies and the Association of National Advertisers, November 1992 (hereinafter "AAAA/ANA Report" ("Numerous studies have demonstrated that increased clutter diminishes the effectiveness of the advertising medium.") AAAA/ANA Report at 5.

the proliferation of alternative video programming options has had the effect of keeping commercial time at levels *below* the pre-1984 FCC limits of 16 minutes per hour. According to the AAAA/ANA Report, commercial time in each of the network dayparts in November 1991 and November 1992 was as follows:

CHART D: COMMERCIAL MINUTES PER HOUR

Average Commercial Minutes	Prime	Sports	Local Evening News	Early AM	Late Fringe	Network Evening News	Daytime	Average
Nov. '91	9:38	11:09	13:59	13:03	15:07	13:47	14:40	12:50
Nov. '92	9:42	10:09	13:48	13:49	13:56	14:07	14:48	12:41

Chart D Legend: Commercial time, including local and network time, in each network daypart. Source: AAAA/ANA Report at 11.

The AAAA/ANA Report survey findings are supported by an informal survey of the television stations associated with the Commenters. The survey of eight television stations' program logs, between November 1 and November 7, 1993 shows that between 4pm and 10pm the average amount of commercial time aired was 12:17 minutes. Chart E, below, shows the average amount of commercial time, network and local, per survey hour.

CHART E: AVERAGE MINUTES COMMERCIAL TIME

M-S 4-5pm	M-S 5-6pm	M-S 6-7pm	M-S 7-8pm	M-S 8-9pm	M-S 9-10pm		M-S 4-10pm
11:42	12:53	14:11	12:41	10:59	11:19		12:17

Chart E Legend: Average amount of local and network commercial time per survey hour in minutes. Source: Informal survey of Commenters' stations.

The type of commercialization typified by "infomericals" and home shopping services, remains relatively uncommon. Stations have been

able to program such formats since the *Deregulation Order* in 1984, yet in the decade of deregulation, limited numbers of licensees are programming their stations with this format.[17] Consistent with the Supreme Court's recent pronouncements regarding commercial speech,[18] the Commission determined that home shopping formats do serve the public interest and that there is a public need for such programming.[19] The economic success of stations programming home shopping formats, is empirical evidence that the viewing public does not consider the format over commercialization but, a service that a segment of the viewing population desires and/or needs.

Home shopping stations provide a service different and apart from the typical broadcast station. Viewers seeking informational and entertainment programming will react negatively to over commercialization of the typical broadcast station, while viewers seeking home shopping services will react positively to such programming. Thus, despite the growth of the wholly commercial home shopping format, viewer discretion still controls the amount of commercial material broadcast on any given station. The amount of commercial material appropriate will necessarily vary depending the on type of programming the viewer desires. The viewers, by their viewing choices, determine the amount of commercialization acceptable for a given program.

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17 *See* note 14, *supra.* (Less than 10% of the licensed commercial television stations have affiliation agreements with Home Shopping Network, Inc.)

18 *See* Section C, *infra.*

19 *Home Shopping Report and Order, supra.*

The Commission can see that limitations on the amount of commercial material a television station may broadcast are unnecessary. The rationales underlying the 1984 deregulation of commercial time are more valid today in light of the extensive growth of video programming alternatives in the last decade. Industry data clearly demonstrate that television broadcasters are sensitive to market competition and refrain from over commercialization in their own economic self-interest. There is no industry-wide[20] problem requiring the re-imposition of regulation by the FCC.[21]

C. Regulation of Program Content Through Limitations On Commercial Speech Would Violate the First Amendment

In 1984 the Commission expressed concern that the continued enforcement of commercial time limits would violate the First Amendment protections extended to commercial speech by the Supreme Court.[22] The Supreme Court has repeatedly made clear that society has an interest in obtaining broad access to complete and accurate commercial information. *See Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 762-765 (1976); *Bates v. State Bar of Arizona*, 433 U.S. 350, 377-378 (1977); *Central Hudson Gas and Electric Corp. v. Public Service Commission of New York*, 447 U.S.

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20 *Home Shopping Report and Order, supra.*

21 Even without specific numerical limits on commercial programming the Commission has adequate authority to address abuses on a case-by-case basis. Every broadcast station retains the obligation to broadcast in the public interest, and substantial evidence of excessive commercialization by a particular station can be evaluated as part of the license renewal process. *See* 47 U.S.C. § 309(a).

22 *Television Deregulation* at 1104 *citing Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976); *Bates v. State Board of Arizona*, 433 U.S. 350 (1976); and *Bigalow v. Virginia*, 421 U.S. 809 (1975).

557, 561-562 (1980). Commercial expression not only serves the economic interest of the speaker (and the broadcaster), but also assists consumers and furthers the societal interest in the fullest dissemination of information. *Central Hudson, supra,* 477 U.S. at 557.

> The commercial marketplace, like other spheres of our social and cultural life, provides a forum where ideas and information flourish. Some of the ideas and information are vital, some of slight worth. But the general rule is that the speaker and the audience, not the government, assess the value of the information presented.

Edenfield v. Fane, 507 U.S. ____, 123 L.Ed. 2d 543, 552 (1993).

Any restriction upon commercial speech must meet the four prong test of *Central Hudson, supra.* Specifically, the Supreme Court established criteria to be used when evaluating the constitutionality of a restriction on commercial speech: 1) whether the commercial speech concerns a lawful activity and is not misleading; 2) if so, whether there is a substantial governmental interest in regulating the speech; 3) if so, whether the regulation directly advances those interests; and 4) whether the regulation is more extensive than necessary to advance those interests. *Central Hudson, supra.*

Any limitation on the amount of commercial speech a broadcaster (and consequently an advertiser) may air must be supported by a substantial governmental interest, must directly advance that interest and must be the least restrictive means of doing so. Because the NOI

confront misleading commercials about unlawful activities, the first prong of the *Central Hudson* test is satisfied. The government therefore has the burden of demonstrating that new restrictions on commercial speech would meet the remaining criteria. The government has the burden of a) identifying the substantial government interest being advanced; b) demonstrating how the regulation directly advances those interests and c) proving that the regulations are no more extensive than necessary to advance the identified governmental interest. During the ten years since deregulation, the amount of advertising aired on broadcast television (not including home shopping stations) has remained below the FCC's pre-1984 limits, while market competition has significantly increased, thereby enhancing viewer discretion and choice. In these circumstances, the government does not have a substantial interest in restricting the amount of commercial speech aired on broadcast stations. Absent evidence that market forces are ineffective in establishing limits on commercial speech, the government has no substantial interest in restricting such speech.

Furthermore, given the market self-regulation, any attempt to governmentally impose regulation would necessarily be unacceptably broad. The market place provides an effective and less restrictive alternative to governmentally imposed restrictions. As recently reiterated by the Supreme Court, "the speaker and the audience, not the government, assess the value of the information presented." *Edenfield v. Fane,* 123 L.Ed. 2d at 552.

D. Unnecessary Regulation Places An Undue Burden On Both The FCC And The Broadcast Licensee.

The regulatory burden associated with imposition of commercial time limitations is wholly disproportionate in relation to any slight public interest benefit derived therefrom. In this era of economic strife for both the government and private enterprise, additional regulation must be assessed on a cost-benefit analysis.

With respect to the government, the Federal Communications Commission is entirely overburdened and without sufficient resources. To meet the congressionally-mandated regulation of cable television the Commission has had to turn to Congress for additional funding.[23] In other areas, too, the Commission finds itself without the means to accomplish its task. For example, broadcasters are left wondering about the status of their license while the Commission takes an average of 3 years to act on a renewal involving EEO matters. Processing of other routine matters is often delayed to the economic detriment of both the public and licensees. If regulation is not mandated by Congress and is not necessary, as is the case of commercial time limits, the Commission's limited resources are better used in other priority areas.

Broadcasters, are also limited in the amount of resources available during this economic downturn. The Commission seeks comment how, if at all, commercial limitation should be enforced. *NOI* at ¶ 8. Imposition of any commercial limits would require stations to maintain program logs and to keep them available to document compliance. Although most

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23 Supplemental Appropriations Act of 1993, P.L. 103-50, 107 Stat. 241.

broadcasters still maintain program logs showing commercial announcements, they do so for their own business purposes and are no longer required to do by FCC regulation. Simply storing program logs for an entire license period creates an added cost for broadcasters. Logs of commercial time are an unnecessary "bean counting" exercise which do nothing to protect the public interest. Such measures create menial tasks, where a minor technical violation could jeopardize a license even when the station otherwise complies with the Commission's Rules and Policies and serves the public interest. Where, as here, the viewing public can and does regulate the broadcaster to act in the public interest, exercises in regulation for regulation's sake would be an abuse of the authority of the agency, a waste of limited public and private resources and a betrayal of the public trust.[24]

The private and public costs associated with regulation of the amount of commercial time a broadcaster may air are not out-weighed by the public interest benefits. The public -- the free market -- can better regulate the amount of commercial matter on broadcast television itself, at no cost to the government.

III. Conclusion

The Commenters, licensees of television stations throughout the United States, submit that the proliferation of video programming outlets, including cable television channels, satellite and video, have given viewers more control over the programming they receive and the

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24 The Commission can and does regulate true cases of over-commercialization through the renewal process. *See* note 22, *supra*, and accompanying text.

ability to "regulate" commercialization through the "tyranny of the remote control." In addition, the competition to broadcast television forces licensees to pay ever greater attention to the viewing public's tastes, needs and desires and to program accordingly to maintain ratings and the resulting advertising support.

Commercial time limits similar to those in place prior to the 1984 *Deregulation Order* are not necessary given this competition. Furthermore, empirical data demonstrates that a decade after deregulation, television stations are generally broadcasting fewer commercial minutes than were allowed under the pre-deregulation limits. Television stations also are airing significantly fewer commercial minutes than cable networks, which are not subject to any such regulations. Thus, even without governmental regulation, broadcast stations are being regulated by market forces.

Limitations upon the amount of commercial material a broadcast station may air, runs afoul of the First Amendment. No substantial governmental interest would be advanced by such limitations given the current market-place. Any governmental interest to be advanced from limitations on commercial matter is being met by market-driven self-regulation. Thus, re-imposition of regulations limiting commercial matter on broadcast television are both unnecessary and unconstitutional.

Finally, the unnecessary regulation of commercial time will place an undue burden on the limited resources of both the government and

broadcasters. The minimal public interest benefit to be derived from such regulation does not out-weigh the costs of the regulation.

WHEREFORE, the premises considered, Meredith Corporation and Northstar Television Group, Inc. respectfully submit these comments in response to the Notice of Inquiry In the Matter of Limitations on Commercial Time on Television Broadcast Stations and urge the Commission not to impose limitations on the amount of commercial matter a broadcast television station may air.

Respectfully submitted:

MEREDITH CORPORATION AND
NORTHSTAR TELEVISION GROUP, INC.

By: Dawn M. Sciarrino
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